



CITY OF HAYWARD

AGENDA REPORT

AGENDA DATE 05/23/06

AGENDA ITEM 13

WORK SESSION ITEM _____

TO: Mayor and City Council

FROM: City Manager

SUBJECT: First Amendment to Cooperation and Option Agreement with
Russell City Energy Center-LLC

RECOMMENDATION:

It is recommended that the City Council adopt the attached resolution authorizing the City Manager to execute the First Amendment to the referenced Agreement with Russell City Energy Center-LLC

DISCUSSION:

Last October, the City Council authorized execution of a Cooperation and Option Agreement with Russell City Energy Center-LLC in connection with the power plant to be constructed adjacent to the City's wastewater treatment plant on Enterprise Avenue. In conjunction with the agreement, the City agreed to exchange 12.2 acres of City property for 10.2 acres of land abutting the plant to the north owned by Calpine. Exhibit A to this report, which was presented to the Council last October, shows the properties that were to be exchanged.

Since the Council's approval action, Calpine has reached agreement with PG&E to enter into a long-term power purchase agreement, pursuant to which Calpine is to provide electricity to PG&E commencing the summer of 2010. To meet this deadline, construction of the RCEC must commence no later than the summer of 2008. As a result, Calpine will be processing an amendment to the license granted to it by the California Energy Commission. In preparation for such submittal, Calpine has evaluated the layout of the RCEC.

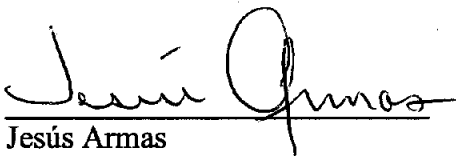
As the Council will recall, the RCEC was to be constructed with an east-west orientation, wholly contained within the property Calpine was to obtain from the City. As reported last October, a portion of the land to be conveyed to Calpine by the City is encumbered by a number of underground pipes and utilities. Closer study of the underground facilities resulted in a determination by Calpine to change the orientation of the RCEC to more of a north-south orientation. Due to this new configuration (see Exhibit B), Calpine proposes to site the plant partially on property it owns, and partially on the property to be conveyed to it by the City. The impact to the City is to reduce the amount of land to be conveyed to Calpine, from the 12.2 acres agreed to in October, to 5 acres today. Because Calpine will be utilizing its property to the north of the plant, Calpine is unable to convey this property to the City, as previously proposed.

Fortunately, Calpine owns a 3.5-acre parcel nearby that is surplus to its needs. The property, which is rectangular in shape (identified as Rennel in Exhibit C), has frontage on both Enterprise and Whitesell. Because of its location, this parcel lends itself to being developed in the future, likely in an industrial or manufacturing capacity, and is deemed more valuable than the City-owned property adjacent to the wastewater plant. Consequently, Calpine proposes to exchange this 3.5-acre parcel with the City for the aforementioned 5-acre parcel. Staff concurs with this proposal and recommends its approval.

The new layout of the RCEC will result in a portion of the energy center being constructed on land currently within the jurisdiction of Alameda County, although intended to be annexed into Hayward in the near future. Even after it is annexed into the City, it will remain in the redevelopment area of the County. This results in a portion of the property taxes that would normally accrue to the City, instead accruing to the County redevelopment agency. Calpine was informed that this potential loss of property tax revenue is of concern to the City. To address this concern, Calpine has agreed to make up or "backfill" this loss. Accordingly, Calpine has agreed to provide an additional payment to the City so that when it is combined with the property tax revenue received by the City, it will equal the full amount the City would have realized if the RCEC were located entirely in the City and not in a County redevelopment area.

To reflect the new parcels to be exchanged between Calpine and the City, and to formalize Calpine's obligation to backfill the loss in property tax revenue, the Cooperation and Option Agreement approved in October is proposed to be amended. Labeled the First Amendment, a copy of which is on file in the City Clerk's office, the document consists of the substantive changes mentioned above, as well as other revisions intended to delete provisions which are obsolete and no longer applicable.

Staff recommends approval of the attached resolution authorizing execution of the First Amendment.


Jesús Armas
City Manager

Attachments: Exhibit A
Exhibit B
Exhibit C
Resolution

DUE TO THE COLOR OF THE
ATTACHMENTS, THEY HAVE BEEN
INCLUDED AS SEPARATE LINKS

DRAFT

HAYWARD CITY COUNCIL

RESOLUTION NO. 06-

Introduced by Council Member _____

**RESOLUTION AUTHORIZING THE CITY MANAGER TO
EXECUTE THE FIRST AMENDMENT TO THE AGREEMENT
WITH RUSSELL CITY ENERGY CENTER-LLC**

WHEREAS, in October 2005 the City Council authorized execution of a Cooperation and Option Agreement with Russell City Energy Center -LLC (RCEC) in connection with the power plant to be constructed on Enterprise Avenue; and

WHEREAS, subsequent changes to the construction configuration require substantive changes and revisions to the Agreement with RCEC.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Hayward hereby authorizes the City Manager to negotiate and execute the First Amendment to the Cooperation and Option Agreement with Russell City Energy Center-LLC on file in the Office of the City Clerk, in a form approved by the City Attorney.

IN COUNCIL, HAYWARD, CALIFORNIA _____, 2006

ADOPTED BY THE FOLLOWING VOTE:

AYES: COUNCIL MEMBERS:

MAYOR:

NOES: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ATTEST: _____
City Clerk of the City of Hayward

APPROVED AS TO FORM:

City Attorney of the City of Hayward